

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MENACHEM PRI-HAR,
Petitioner,

-vs-

JANET RENO, Attorney
General of the United States, and
Charles W. Zemski, Acting
District Director,
Respondents.

Civil No.: 1: CV-00-1635

(Judge Caldwell)

AFFIDAVIT OF MENACHEM PRI-HAR
IN SUPPORT OF THE MOTION FOR
RECONSIDERATION

FILED
HARRISBURG, PA

DEC 20 2004

MARY E. DIANDREA, CLERK
Per MD

MENACHEM PRI-HAR, under penalty of perjury, pursuant to 28 U.S.C. §1746,
deposes and says:

(1) I am the Petitioner herein submitting this affidavit in support of my motion for reconsideration of the December 3, 2004 Memorandum and Order.

(2) I am incarcerated in a private prison known as McRae Correctional Facility located in McRae, Georgia (referred hereinafter as "McRae").

(3) I have a pending litigation against the Federal Bureau of Prisons ("BOP") concerning, among others, my transfer to McRae. In this action I argued that the BOP should have not transferred me to McRae, a prison which houses only federal prisoners with a final deportation order, since my deportation status was still subject to ICE's consideration of waiver under INA §212(h).

(4) Thomas E. Washburn, designations administrator at the BOP, countered my representation with a declaration stating that the BOP's record shows my deportation status is

-2-

final. (See the declaration of Thomas E. Washburn, dated December 26, 2002, Par. 7, attached herewith as Exhibit).

(5) As Exhibit No. 1 to his declaration, Washburn attached the BOP's Operations Memorandum for McRae, dated November 18, 2002. In this memorandum, it specifically stated that the release of McRae's prisoners be done through actual deportation. (See Washburn's Decl. Ex. 1, Pg. 1).

(6) As a prisoner in McRae I learned that indeed all of McRae's prisoners received a final deportation order, and upon release from this prison, law enforcement personnel of certain counties within the State of Georgia handle for ICE the actual deportation from the United States.

(7) There are no immigration proceedings at McRae, because its prisoners have already received a final deportation order at BOP's facilities which provides a ward for immigration proceedings.

Dated: McRae, Georgia
December 15, 2004

A handwritten signature in black ink, appearing to read 'MENACHEM PRI-HAR', written over a horizontal line.

MENACHEM PRI-HAR

EXHIBIT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MENACHEM PRI-HAR
Plaintiff

V.

Civ. Action No.02-CV-2552

FEDERAL BUREAU OF PRISONS
Defendants

DECLARATION OF THOMAS E. WASHBURN

I, THOMAS E. WASHBURN, do hereby declare and state as follows:

1. I am the Designations Administrator for the Northeast Region of the United States Department of Justice, Federal Bureau of Prisons. I have been employed in this capacity since August of 2000 and have been employed by the Bureau of Prisons since 1990.
2. As Regional Designations Administrator, I am familiar with inmate security designations and custody classifications in the Northeast Region. Bureau of Prisons policies and procedures for security designations and custody classifications are set forth in Program Statement 5100.07, Security Designations and Custody Classification Manual.
3. I have reviewed the Supplemental Affidavit filed by Inmate

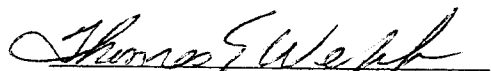
Menachem Pri-Har, Register Number 34446-054, in which he challenges the decision to transfer him from the Federal Correctional Institution ("FCI Fort Dix") Fort Dix, New Jersey, to the McRae Correctional Facility ("McRae"), McRae, Georgia. Inmate Pri-Har asserts that the Warden at FCI Fort Dix is transferring him in retaliation against him for filing an administrative remedy complaint. Inmate Pri-Har also claims that he should not be transferred to McRae because his Deportation Order is not final. Furthermore, he argues that McRae is too far from his father and that the Bureau of Prisons did not take that factor into consideration.

4. I am familiar with the pending transfer of Inmate Pri-Har and other inmates to McRae. McRae was recently activated on December 2, 2002. McRae is owned and operated by the Corrections Corporation of America ("CCA"), which is under contract with the Bureau of Prisons to confine **LOW security adult non-U.S. citizen males** who have **60 months or less** remaining to serve on their sentences.
5. The Bureau of Prisons tracks inmates' security designation and custody classification through its central computer database system (SENTRY). I have reviewed the SENTRY records maintained for Inmate Pri-Har.

6. A review of SENTRY also reveals that Inmate Pri-Har has failed to exhaust available administrative remedies with regard to his transfer to McRae.
7. Inmate Pri-Har is currently confined at FCI Fort Dix, which is a LOW security facility. On December 12, 2002, Inmate Pri-Har was approved for an "Increase Population" transfer to McRae. The purpose of an "Increase Population" transfer is to build a population, usually upon activation of a new facility, such as McRae. Inmate Pri-Har is a LOW security inmate and, assuming he receives all good conduct time (GCT) available to him under 18 U.S.C. § 3624(b), his projected release date is June 20, 2005. He is a citizen of Israel. SENTRY records indicate he has been ordered deported by the Immigration Naturalization Service ("INS"). Therefore, Inmate Pri-Har's claim is without merit.
8. Attached to this declaration is a copy of a November 18, 2002 memorandum issued from the Assistant Director Michael B. Cooksey concerning activation of the McRae Correctional Facility. The criteria provided in this memorandum was followed in determining which Bureau of Prisons inmates to transfer to McRae. I have also attached a Request For Transfer/Application of Management Variable form for Inmate Pri-Har and an Inmate Profile printout from SENTRY on Inmate

Pri-Har.

I declare that any and all records attached to this declaration are true and accurate copies maintained in the ordinary course of business by the Federal Bureau of Prisons. I further declare that the foregoing is true and correct to the best of my knowledge and belief, and is given under penalty of perjury pursuant to 28 U.S.C. § 1746.



Thomas E. Washburn
Designations Administrator
Northeast Regional Office
Federal Bureau of Prisons

12-26-02

Date



MCA

U.S. Department of Justice
Federal Bureau of Prisons

Operation S Memoran dum

NUMBER: 038-2002 (7740)
DATE: 11/18/2002
SUBJECT: Activation of the
McRae Correctional
Facility, (Private
Secure Contract
Facility in McRae,
Georgia)

EXPIRATION DATE: 11/18/2003

1. **PURPOSE AND SCOPE.** To announce the activation of the privately operated LOW security level McRae Correctional Facility, McRae, Georgia. This Operations Memorandum provides a plan to ensure this facility's orderly and systematic activation.

2. **DESIGNATION/REDESIGNATION CRITERIA.** McRae Correctional Facility is owned and operated by the Corrections Corporation of America (CCA) which is under contract with the Bureau to confine **LOW security adult non-U.S. citizen males** who have **60 months or less** remaining to serve on their sentence.

Inmates placed at McRae will be released predominantly to countries in South and Central America. The countries of Mexico and Cuba are excluded. Inmates who may or will be releasing to Mexico or Cuba will not be approved for placement at McRae.

Inmates with the following conditions **may not** be approved for

Exhibit 1

placement at McRae:

- work restrictions or chronic care clinic diagnosis;
- requirement for regular maintenance visits for treatment;
- more than six disciplinary reports for which the inmate has been found guilty by either the Unit Discipline Committee or the Discipline Hearing Officer during the past 12 months;
- placed or retained in disciplinary segregation;
- long-term protective custody needs; or
- six-months or less remaining to serve.

Exception. The Bureau's Privatization Facility Administrator (PFA) responsible for the McRae contract can make an exception to these Designation/Redesignation criteria, in accordance with Bureau's **Security Designation and Custody Classification Manual**.

OM XXX-XX (XXXX)

DRAFT MM/DD/YY

Page 4

3. **ACTIVATION SCHEDULE.** The McRae Correctional Facility's anticipated activation date is **December 2, 2002**. Inmate movement will occur according to the following schedule and instructions:

a. **Initial and Redesignations.** Effective immediately, all regions may submit initial and redesignation requests to their respective Regional Designator for transfer consideration to McRae. Inmates approved for transfer **before the activation date** will be moved to approved holdover points of FCI Tallahassee, Florida or USP Atlanta, Georgia.

A notation on the inmate's CIM Clearance and Separatee Data Display must indicate that movement into McRae will take place after December 2, 2002.

The SER Designator is the point-of-contact for movement of inmates to McRae.

b. **Populating McRae.** Inmates moved into McRae will not exceed the rate of approximately 40 inmates per week unless otherwise approved by the Bureau PFA.

Any special movement of inmates must be coordinated between the sending institution and the McRae Warden with the concurrences of the PFA and the SER Designator.

4. **INSTITUTION PROGRAMS/SERVICES.** Programs available at activation include work, education, law library, recreation, telephone, and visiting and inmate services such as commissary, food service, and laundry. McRae's telephone system will allow inmates to make both collect and debit telephone calls.

Inmate personal property will be limited to that allowed in the Program Statement on Inmate Personal Property.

Sending institutions will arrange for inmate personal funds, allowable property, and official records to accompany the inmate to McRae.

/s/

Michael B. Cooksey
Assistant Director
Correctional Programs
Division

EMS-409.051 REQUEST FOR TRANSFER/APPLICATION OF MANAGEMENT VARIABLE CDFRM
 AUG 99

U.S. DEPARTMENT OF JUSTICE FEDERAL BUREAU OF PRISONS

| | | |
|--|--|------------------------|
| From: | Facility: FCI Fort Dix, New Jersey | Date: December 5, 2002 |
| C.J. DeRosa, Warden | | |
| Inmate's Name: PRI-HAR, Menachem | Register No. 34446-054 | |
| To: M.E. Ray, Northeast Regional Director | Thomas E. Washburn, Northeast Regional Designator | |

XXX Transfer to: McRae Correctional Facility, Georgia (318/Increase Population)

Apply Management Variable(s)

Update Management Variable Expiration Date. (New Date):

1. Inmate's Medical Status: Inmate Pri-Har is assigned the medical status of regular duty with no medical restrictions. His mental health evaluation is favorable.

2. Institution Adjustment (Include a brief description of the inmate's adjustment during this period of incarceration with emphasis on recent adjustment)

Inmate Pri-Har has made a favorable adjustment to confinement. He maintains a decent working rapport with staff and other inmates and earns average work evaluations. He is currently participating in the Inmate Financial Responsibility Program and has a remaining balance of \$38,999.675.00 restitution and \$1,000,000.00 fine.

DISCIPLINARY RECORD

| 3. Date/Institution | Incident | Sanction |
|---------------------|---|--|
| 01-09-2001/FTD | Refusing to Obey an Order (307) | 13 days loss of GCT 15 days DS 365 days loss of commissary 5 years loss of Phone 365 days loss of visiting |
| 12-08-2000/ALF | Disruptive Conduct (499) | 1 year loss of phone |
| 12-01-2000/ALF | Refusing to Obey an Order (307) | 180 days loss of commissary |
| 08-01-2000/ALF | Using Phone or Mail Without Authorization (406) | 4 months loss of commissary 12 months loss of phone |
| 06-23-1998/LOR | Using Phone or Mail Without Authorization (406) | 60 days loss of telephone Pending 180 days suspended 30 days loss telephone |
| 01-28-1998/LOR | Failing to Follow Safety Regulations (317) | Confiscate and Destroy Property |
| 01-28-1997/LOR | Interfering with Taking Count (321) | 10 hours extra duty |
| 07-02-1996/LOR | Possessing Unauthorized Money (303) | Change Quarters for 30 days and loss of commissary 30 days |
| 12-18-1995/LOR | Possessing Unauthorized Money (303) | Confiscate excess money 14 days commissary restriction |
| 05-31-1994/OTV | Failing to Follow Safety Regulations (317) | 7 days loss of visiting 7 days commissary restriction |

Exhibit 2

4. Rationale for Referral. (For Mariel Cuban Detainees, include availability of community resources and status of INS review process in this section.)

Inmate Pri-Har is a Low Security Level inmate with In Custody. He is serving a 168 Month Sentence for Conspiracy to Defraud the U.S. Department of Agriculture; Conspiracy to Commit Bank Fraud; Conspiracy to Commit Wire Fraud; Wire Fraud. His Good Conduct Time Release Date is June 20, 2005. The Unit Team is recommending transfer to McRae Correctional Facility, Georgia to increase the population at that facility. He is classified as a Central Inmate Monitoring case with the assignment of Separation.

5a. Parole Hearing Scheduled: Yes ☒ No ☐ b. If yes, when N/A

6. Note any past or present behavior and/or management/inmate concerns.

There is one discrepancy between the BP-337 and BP-338. The BP-337 scores inmate Pri-Har with a Moderate severity detainer due to a possible pending fraud case noted in this Pre-Sentence Investigation report. However, as no formal charges have been filed in this case, the charges cannot be scored as a detainer.

Staff have checked the following SENTRY Programs to ensure that they are correct and current:

| | |
|----------------------|-----------------------------------|
| Inmate Profile | CIM Clearance and Separatee Data |
| Inmate Load Data | Custody Classification Form |
| Sentence Computation | Chronological Disciplinary Record |

Prepared by: F. Perkins, Case Manager

Unit Manager Signature

If the transfer is approved, a Progress Report will be completed prior to transfer.

*For Mariel Cuban Detainees - Staff have entered the CMA Assignment of "C.P. RV DT" to indicate the need for a Cuban Review Panel Hearing four months from his/her Roll-Over Date.
(This form may be replicated via WP)

NERGE 535.03 *
 PAGE 001 OF 001
 34446-054
 REGNO: 34446-054
 NAME.: PRI-HAR, MENACHEM
 RSP.: FTD-FORT DIX FCI
 PHONE: 609-723-1100
 PROJ REL METHOD: GOOD CONDUCT TIME RELEASE
 PROJ REL DATE.: 06-20-2005
 PAR ELIG DATE.: N/A
 PAR HEAR DATE.:
 OFFN/CHG RMKS: CONS:DEFRAUD/DEFRAUD USDOA;CONS:BANK FRAUD/BANK FRAUD;93CR0278
 OFFN/CHG RMKS: CONS:WIRE FRAUD & WIRE FRAUD;FALSE STMT LOAN/CREDIT:168M,5Y SR
 FACIL CATEGORY - - - - - CURRENT ASSIGNMENT - - - - - EFF DATE TIME
 FTD ADM-REL A-DES DESIGNATED, AT ASSIGNED FACIL 09-14-2001 1406
 FTD COR COUNSL 5751 M-Z J. DIXON, COUNSELOR, EXT 395 09-14-2001 1406
 FTD CASE MGT CF REMOVAL COMMON FARE PROGRAM REMOVAL 05-19-2000 1947
 FTD CASE MGT CESA CERT FOOD SINCERITY APPROVAL 01-11-2001 2015
~~FTD CASE MGT IHP CMPWD WITH IHP COMPLE WITH REPORT INS 06-16-2001 0900~~
 FTD CASE MGT ITTIS DENY ITT IS TRTY TRANS DENIED 11-05-2001 0838
 FTD CASE MGT ITTIS ELIG ITT IS ELIGIBLE FOR TRTY TRANS 05-21-2001 1809
 FTD CASE MGT OAK REMOVE OAKDALE INS DETN REMOVED 04-05-2000 1438
 FTD CASE MGT PROG RPT NEXT PROGRESS REPORT DUE DATE 07-17-2005 0934
 FTD CASE MGT V94 COB913 V94 CURR OTHER BEFORE 91394 09-28-2001 1201
 FTD CMC SEPARATION SEPARATION 05-18-1994 1419
 FTD CORR SVCS RAN NEG RANDOM DRG TST-NEGATIVE 12-26-2001 1500
 FTD CORR SVCS SAT NEG SATURATION DRG TST-NEGATIVE 06-06-2002 1201
 FTD CORR SVCS SUS D-TEST SUSPECT DRG TST 03-31-2001 1502
 FTD CASEWORKER 5751 M-Z F. PERKINS, CSW, EXT 393 09-14-2001 1406
 FTD CUSTODY IN IN CUSTODY 10-27-1993 1134
 FTD DRUG PGMS DRG I NONE NO DRUG INTERVIEW REQUIRED 09-01-1994 1703
 FTD DESTINATION MCA IHPR MCRAE CI-IHP RELEASE 12-12-2002 1303
 FTD EDUC INFO ESL HAS ENGLISH PROFICIENT 04-10-1995 1137
 FTD EDUC INFO GED UNSAT GED PROGRESS UNSATISFACTORY 05-12-1999 1143
 FTD EDUC INFO GED XN EXEMPT GED NON-PROMOTABLE 08-28-1994 2119
 FTD FIN RESP PART FINANC RESP-PARTICIPATES 02-25-2002 1605
 FTD LEVEL LOW SECURITY CLASSIFICATION LOW 03-27-1995 0917
 FTD MED DY ST REG DUTY NO MEDICAL RESTR--REGULAR DUTY 05-08-2002 1117
 FTD MED DY ST YES F/S CLEARED FOR FOOD SERVICE 05-08-2002 1117
 FTD PGM REVIEW JAN JANUARY PROGRAM REVIEW 01-10-2003 1538
 FTD QUARTERS E03-394L HOUSE E/RANGE 03/BED 394L 12-06-2002 1133
 FTD RELIGION JEWISH JEWISH 02-04-1994 0927
 FTD SECUR THRT FRAUD HISTORY OF FRAUD 06-21-2000 1937
 FTD SECUR THRT PILOT PILOT 06-21-2000 1937
 FTD SECUR THRT POSTPIC POSTED PICTURE CARD FILE 03-08-1999 1147
 FTD UNIT UNIT3-IHPR T.K. COZZA-UNT MGR, EXT 390 07-18-2002 1745
 FTD WAITNG LST FS PHYS PHYSICAL COMPLETED FOR FS 05-08-2002 1119
 FTD WRK DETAIL FS 50 AM K FOOD SERVICE 5750 AM KITCHEN 11-30-2002 0001

G0017
G0000

WARNING : NOTIFICATIONS ARE REQUIRED PER P.S. 1490.06
 TRANSACTION SUCCESSFULLY COMPLETED

Exhibit 3